# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

Writ Petition (C) .....No. 4 of 2007

M/s. Unicorn Industries ..... Petitioner / Appellant

Versus

Union of India & ors. ..... Respondent

| Serial No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
|---|---|---|---|
| 1. | 23.3.2007 | Present: Mr. A. K. Upadhyaya, Sr. Advocate with Miss Manita Pradhan, Advocate for the Petitioner.<br><br>Mr. Karma Thinlay, Central Govt. Standing Counsel for the U.O.I.<br><br>Mr. J.B. Pradhan, Govt. Advocate for the State-Respondents.<br><br>---<br><br>The writ petition and the stay application are disposed of finally without calling for affidavits. As the respondents have not had a chance of filing an opposition, the allegations in the petitions are not to be taken as admitted by them to any extent in any regard. The petitioner is aggrieved by an Order dated the 2nd of January, 2007 (Page 51 of the writ petition) whereby a sum of Rs.73,00,000/- (Rupees seventy three lakh) approximately along with interest was claimed back from the writ petitioner as money to be credited back by them.<br><br>The writ petitioner submits that on the basis of two Notifications dated 17.2.2003 and 9.9.2003 (Pages 34 and 38 respectively | |

| Serial No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
|---|---|---|---|

of the writ petition) the Central Govt. exempted payment of Excise Duty in certain cases, which cover the writ petitioner, for a period of ten years, from the setting up of an industry in Sikkim; that the tax holiday was being given by way of this scheme, that the writ petitioner (and others) would have to pay the otherwise leviable Excise Duty, but they would be refunded the sum on an appropriate application. According to the writ petitioner this refund was made but is being wrongly claimed back by the respondents.

This is not strictly a Section 11 or 11A demand under the 1944 Act but is a demand only related to these Sections. In any event, a final demand of this nature cannot be made like a bolt from the blue without hearing the writ petitioner at all. As such, the notice dated 2.1.2007 shall only be treated as a notice to the writ petitioner to show cause why the writ petitioner should not pay back the demanded sum along with the demanded interest. The notice will be answered by the writ petitioner within a period of four weeks from date hereof. Thereafter, the parties will take steps in accordance with law. The respondents and each of them and their officers, agents and employees are restrained permanently from treating the said demand dated 2.1.2007 as

| No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
|---|---|---|---|
| | | a final demand or as a demand on which any compulsive steps for recovery be taken whether under Section 142 of the Customs act or otherwise.<br>This order is final but without prejudice to the rights and contentions of the parties in future matters and in regard to future orders, if any, to be passed by the respondents in regard to this matter.<br>Whether the writ petitioner is entitled to tax holiday at all or not will have to be decided on the basis of a reasoned order after hearing the writ petitioner's representation and future steps will be taken by the parties in accordance with law and the correct interpretation of it.<br>(Ajoy Nath Ray, CJ)<br>(N.S. Singh, J.) | |